Court No. 2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

A.O. No. 198 of 2003

United India Insurance Company, Ltd.,
Through its Regional Manager,
Regional Office, Canal Road, Haldwani,
District Nainital (Uttaranchal).

…… Appellant.

Versus

1. Smt.Bhagirathi Devi wife of Late Shri Nain Singh
2. Kamal Singh S/o late Shri Nain Singh,
3. Km.Meena D/o late Shri Nain Singh,
4. Km.Nirmala D/o late Shri Nain Singh,
5. Sooraj Singh S/o late Shri Nain Singh,
   All residents of Village-Suraina, P.O.Kanalicheena,
   District-Pethoragarh (Uttaranchal).
6. Chandra Shekhar Punetha S/o Sri Daya Kishan,
   R/o Vilalge-Bhoonigaon, Tehsil and District-
   Pithoragarh (owner of the vehicle No. UP-03-19889)

…… Respondents.1

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Sri D.S. Patni, learned counsel for the appellant,
Sri G.B. Pandey, learned counsel for the respondents Nos. 1 to 5.

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Date: 2rd Sept., 2004.

Hon'ble P.C.Verma, J.
Hon'ble B.S. Verma, J.

This appeal has been preferred by the United India Insurance Company Ltd. under Section 173 of the Motor Vehicles Act, 1988 against the impugned judgment and award dated 13.06.2003 passed by the Motor Accident Claims Tribunal/District Judge, Pithoragarh in Motor Accident Claim Case No. 120 of 1999, Smt.Bhagirathi Devi and others Versus Chandra Shekhar Punetha and another, whereby the claim petition was decreed against the Opp.party-United India Insurance Company for a

compensation of Rs.6,00,088/- alongwith interest at the rate of 9% per annum from the date of claim petition till the date of actual payment.

2- Brief facts giving rise to this appeal are that on 2.6.1999 at about 7.00 p.m. Truck No. UP 03-1898 met with an accident due to rash and negligent driving by its driver in which Nain Singh died. He was posted as L/Naik in Punjab Regiment and was getting Rs. 6,000/- as monthly salary. The deceased was 34 years old at the time of accident. The claimants, who are legal heirs of the deceased, filed claim petition for compensation due to dependency loss on account of death of Nain Singh.

3- The Opposite parties contested the claim petition before the Tribunal by filing their separate written statement. The Opp.party No.1-owner of the offending Truck No. UP 03-1898 admitted the accident but denied the other allegations of the claim petition. Opposite party No.2-United India Insurance Company denied all the allegations of the claim petition and alleged that the offending truck was plying in violation of the conditions of the insurance policy at the time of accident. The Tribunal, on the pleadings of the parties framed necessary issues and after recording evidence adduced by the parties, allowed the claim petition accordingly against the united India Insurance Company. Feeling aggrieved, the United India Insurance Company has come up in this appeal.

4- The learned counsel for the appellant has contended that before the learned Tribunal it was argued that the deceased was a gratuitous passenger as such the liability cannot be fastened upon the appellant. He also contended that the appellant has a right to contest the case on merit under Section 170 of the Motor Vehicles Act and, therefore, argued that the Tribunal has not properly

appreciated the evidence on record to determine the quantum of compensation.

5- We have gone through the record and perused the impugned judgment. The Tribunal framed the following two issues:-

> *1. Whether the accident in question did occur due to rash and negligent driving of the driver of vehicle No. UP 03-1898 as a result of which Nain Singh died?*
>
> *2. Whether the claimants are entitled to get amount of compensation, if any?*

6- The learned Tribunal on the basis of evidence on oath by P.W.2 Janak Bahadur has given its finding that in the said truck the deceased was traveling wit h his goods like utensils, cereal and fertilizer etc. and the said truck was being driven rashly and negligently. P.W.2 stated on oath that on the day of accident i.e. 02.6.1999 at 7.00 P.M. he was going with his colleagues to work in the Chharandev Magneside A truck bearing registration No. UP 03-1898 came rashly and negligently and hit him and thereafter fell into ditch. In the said truck besides the driver Nain Singh resident of village-Surotha was also boarded who died on the spot. The said truck was loaded by the household goods of Nain Singh like, utensils, cereal and fertilizer etc. P.W.1 Smt. Bhagirathi Devi widow of the deceased also state that her husband was traveling in the said truck alongwith household goods and died in the said accident. O.P.W.1 Chandrashekhar Punera, who is registered owner of the said vehicle No. UP 03-1898 also examined in this case. He stated that on 2.6.1999 at 7.00 P.M. the said vehicle met with an accident on Pipli Kanalichhina motor road in which the driver, cleaner and owner of goods sustained injuries and the owner of goods died due to said injuries during the treatment. He also

admitted that the goods were carrying in the said vehicle. In view of the aforesaid evidence the Tribunal rightly held that the accident occurred due to rash and negligent driving of Truck No. UP 03-1898 in which the deceased was traveling alongwith his household goods. We are fortified in our view by the verdict of the Apex Court in the case of ***Ramesh Kumar versus National Insurance Company Ltd. and others,*** reported in ***2001 (3) Transport and Accidents Cases, 639 (Supreme Court)*** in which it has been held that compensation awarded in such cases where deceased or injures persons were traveling in a goods carriage who where owner or authorised representative, the Insurance Company is liable to pay the compensation. Thus in view of the above law laid down by the Apex Court, none of the contentions raised by the learned counsel for the appellant is tenable.

7. In view of the aforesaid discussion, the appeal has no merit and is hereby dismissed. The impugned judgment and award is upheld. No order as to costs. Amount, if deposited in the appeal, shall be remitted to the Tribunal concerned within a period of three months.

(B.S. Verma, J.) **(P.C.Verma,J.)**

02.09.2004
P.Singh

5- In view of the aforesaid discussion, the appeal has no merit and is hereby dismissed. The impugned judgment and award is upheld. No order as to costs. Amount, if deposited in the appeal, shall be remitted to the Tribunal concerned.